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TRANSMITTAL FORM (to be used for all correspondence after initial filing)	Application Number	09/593,316	
	Filing Date	June 13, 2000	
	First Named Inventor	John Clark, et al.	
	Art Unit	1632	
	Examiner Name	Qian Janice Li	
Total Number of Pages in This Submission	4	Attorney Docket Number	730/002

ENCLOSURES (Check all that apply)		
<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request (in duplicate) <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance communication to Technology Center (TC) <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below):
Remarks Demand for Examiner's Affidavit Pursuant to 37 CFR 1.104(d)(2) (3 pages)		
SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT		
Firm or Individual name	J. Michael Schiff, Registration No. 40,253	
Signature	<i>[Signature]</i>	
Date	August 2 nd / 04	

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Aaren Zielen
Name

August 2, 2004
Date

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventors: J. Clark & C. Denning

Filing Date: June 13, 2000

Serial No: 09/593,316

Docket: 730/002

Title: ANIMAL TISSUE FOR
XENOTRANSPLANTATION

Art Unit: 1632

Examiner: Qian J. Li, Ph.D.

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DEMAND FOR EXAMINER'S AFFIDAVIT

PURSUANT TO 37 CFR § 1.104(d)(2)

Commissioner for Patents
Alexandria VA 22313

Dear Sir:

Claims 1-6, 13-16, and 33-37 of this application stand rejected under 35 USC § 112 ¶ 1 in the Office Action dated January 30, 2003. The rejection is apparently based on facts within the personal knowledge of the Examiner of this application, or his supervisors. Accordingly, applicant hereby submits a formal request for an Examiner's Affidavit, pursuant to 37 CFR § 1.104(d)(2) and MPEP § 2144.03.

PATENT
09/593,316
Docket 730/002

Reason for Requesting Affidavit

The Office Action dated January 30, 2004 indicates that contrary to the pig, knockout of the $\alpha(1,3)$ galactosyltransferase gene kills sheep fetuses.

This is not based on any evidence of record in the application file.

The $\alpha 1,3$ GT gene, and the Gal $\alpha(1,3)$ Gal carbohydrate it produces, are not known to have any essential function for survival of sheep or any other mammal at the fetal stage or at any other stage of life. The coauthors reported preliminary results in a research publication (Nature Biotech. 19:559, 2001) that $\alpha 1,3$ GT knockout sheep did not survive pregnancy. But PrP knockout sheep and sheep cloned from unaltered cells also shown in this report also did not survive pregnancy. Loss of the $\alpha 1,3$ GT knockout sheep is attributable entirely to the regular occurrence of unsuccessful cloning events in this study, regardless of whether the $\alpha 1,3$ GT gene was active or not.

The Office has provided no publication or other evidence to support the contention that knocking out the $\alpha 1,3$ GT gene kills sheep fetuses.

Remedy

In the absence of evidentiary support, the contention that knocking out the $\alpha 1,3$ GT gene kills sheep fetuses is apparently based on facts within the personal knowledge of the Examiner.

Accordingly, applicant requests an Affidavit to document these facts, for which we are entitled. 37 CFR § 1.104(d)(2) states:

When the rejection of an application is based on facts within the personal knowledge of an employee of the office, the data shall be as specific as possible, and the reference must be supported, when called for by the applicant, by the affidavit of such employee and such affidavit shall be subject to contradiction or explanation by the affidavits of the applicant and other persons.

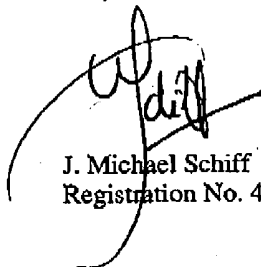
In the alternative, applicant requests that the rejection of claims 1-6, 13-16, and 33-37 be withdrawn, and a Notice of Allowability be issued.

This Demand *remains in effect* until the Affidavit is provided, even should the application be appealed to the Board of Appeals and Patent Interferences. Applicant hereby withdraws the Demand should the application be found in condition for allowance.

PATENT
09/593,316
Docket 730/002

No fee is believed payable with respect to this Demand. Nevertheless, should the Patent Office determine that a fee is required for consideration of this paper, or that any other relief is required for further consideration of this application, applicant hereby petitions for such relief, and authorizes the Commissioner to charge the cost of such petitions and other fees due to Deposit Account No. 07-1139, referencing the docket number indicated above.

Respectfully submitted,



J. Michael Schiff
Registration No. 40,253

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August 2, 2004